

From: Tony Wren
To: Microsoft ATR
Date: 1/18/02 12:31pm
Subject: Microsoft Settlement

To Whom It May Concern:

On January 9, 2002, Robert Lewis, a commentator and management consultant who writes for 'InfoWorld,' a widely-read technology industry trade weekly, posted the following column. I am including it here for the sake of clarity, with my comments following.

"YOUR HONOR, we find the defendant incredibly guilty!"

-- Jury foreman, Mel Brooks' The Producers

NEXT TIME I get a traffic ticket, here's what I'll say in court: "Your honor, the court has found me guilty. I disagree. Also, I disagree in principle with the existence of speed limits on our nation's highways. Several theorists claim that highway traffic should be self-regulating -- we should allow the overall flow of traffic to determine each driver's speed.

"In the case of the U.S. Department of Justice v. Microsoft, the courts established the precedent that when the defendant disagrees with both the law and the finding of the court, the prosecution and guilty party must negotiate as equals to define a settlement agreeable to both parties. I request the court to handle this case the same way."

Think it will work?

Me neither.

Regardless of whether you think antitrust laws are a mistake, obsolete, or inapplicable to the software industry and regardless of whether you personally think Microsoft was actually guilty or not, the outcome of the Department of Justice v. Microsoft was unambiguously disgraceful. With the departure of Joel Klein as lead prosecutor, and U.S. District Judge Thomas Penfield Jackson -- the Lance Ito of antitrust -- as judge, the fix was in. Microsoft said, "Play dead!" and our government's executive branch -- controlled, ironically enough, by the law 'n order

party -- obeyed. From this point forward, Microsoft has no constraints in its use of nonmarket forces to buttress its market position.

As just one example, take a look at Microsoft's investment in Corel. Almost immediately, Corel discontinued WordPerfect Office for Linux. Because Apple, in its ongoing quest for marketplace irrelevance, persistently snubs corporate IT, Linux is the only significant threat to Windows on the desktop. Which means that just as CIOs and CTOs -- faced with increasingly onerous licensing terms from Microsoft -- are searching for a credible way to at least threaten to take their business elsewhere, Corel is running away from the opportunity. Instead, it's trying to sell WordPerfect head-to-head against Microsoft in the Windows environment -- a battle it has already lost.

Pardon me for being suspicious.

For several years I've predicted an impending implosion for Microsoft. I still see serious problems for the company: Microsoft is hemmed in on the server front and has such limited potential for growth on the desktop that it has turned to the only alternative it could think of: predatory licensing.

Its problems, however, have receded now that our government has a "for rent" sign in the front yard that lets Microsoft obey -- and require its customers and competitors to obey -- only those laws it finds convenient.

My comments:

Ever since the settlement between the Department of Justice and Microsoft was announced, I have felt like a victim that has been asked to pay for the losses incurred by the burglar that has been found guilty of robbing me, and to pay for what he stole from me as well. Mr. Lewis' article expresses that sentiment succinctly.

The stated goal of the settlement was to ensure a competitive environment in the technology industry. As an observer and technology consumer for the past 35 years (as a student, researcher and now an academic), I can assure you that the settlement will do nothing of the kind.

The only competitor to Microsoft that has any market share at all is Apple Computer, and their share is steadily falling (from 20% ten years ago to

less than 5% at this time). Apple's new UNIX-based operating system, OS X, could compete with Microsoft's Windows under the proposed 9-State Settlement, and help restore some innovation to the industry. But if the status quo continues, MS will re-assert its dominance and its illegal practices, with devastating effect on our economy. Some have said that it is already doing so, although I am not in a position to verify such claims.

These facts have become increasingly obvious to impartial observers. Bob Lewis is just such an observer. I have been reading his columns for years, and trust him because he is rarely wrong.

To put it bluntly, the proposed settlement places the current DOJ personnel in a very poor light: observers are universally reporting that the attorneys in charge of this case are behaving as if they are either incompetent or corrupt. As a taxpayer and consumer, listening to the near-unanimous condemnation of the proposed settlement, and adding my own experiences, I am forced to come to the same conclusion.

I hope that you will reconsider this poorly-conceived settlement and prove the critics wrong.

Sincerely,

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